



February 16, 2021

*Via Electronic Mail*

Ms. Ann E. Misback  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: *Community Reinvestment Act: Advanced Notice of Proposed Rulemaking; Request for Comment* (Docket No. R-1723 and RIN 7100-AF94)

Dear Ms. Misback:

Ally Bank (“Ally Bank,” “we,” “our” or “us”) appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking (the “ANPR”) issued by the Board of Governors of the Federal Reserve System (the “Board”) to modernize the regulatory and supervisory framework of the Community Reinvestment Act of 1977 (“CRA”).<sup>1</sup> We continue to share in the Board’s commitment to more effectively meet the needs of low- and moderate-income (“LMI”) communities and address inequities in credit access.<sup>2</sup>

As a leading digital financial service provider, we applaud any effort to update CRA regulations in a way that acknowledges the evolving nature of banking and consumer preference and removes the regulatory geographic barriers that currently restrict banks from directing much-needed resources to address critical needs of underserved communities and individuals both *inside* and *outside* a bank’s currently defined CRA assessment areas. Importantly, we strongly support the Board’s efforts to tailor the CRA framework to reflect differences in business models<sup>3</sup> as the banking market continues to evolve and innovate.

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<sup>1</sup> See Community Reinvestment Act (“CRA ANPR”), 85 Fed. Reg. 66410, 66463 (advance proposed October 19, 2020).

<sup>2</sup> See CRA ANPR, 85 Fed. Reg. 66410.

<sup>3</sup> See CRA ANPR, 85 Fed. Reg. 66410.

Ally Bank is an award-winning digital bank that offers its financial products and services nationwide with *no branches or ATMs*. Chartered in Utah, Ally Bank is a subsidiary of Ally Financial Inc. (with its consolidated subsidiaries, “Ally”). Ally Bank is regulated at the federal level by the Board and at the state level by the Utah Department of Financial Institutions. As of December 31, 2020, Ally Bank had \$172 billion in total assets, \$141.7 billion in total deposits, and 8,620 employees. In addition to our headquarters in Sandy, Utah, Ally Bank has primary operations in Detroit, Michigan; Charlotte, North Carolina; Fort Washington, Pennsylvania; New York, New York; Jacksonville, Florida; and Lewisville, Texas.

Ally Bank has been at the forefront of digital transformation in banking, as demonstrated by our premier online retail deposit business and our digital delivery of a broad array of products and services. Our core philosophy and brand are centered around the customer, with a goal of delivering a unique banking experience that is digitally led and offers strong value for consumers. Ally Bank’s strategy is designed to nurture long-term customer relationships and to build on the accelerating shift toward digital banking. Ally serves over 18,000 auto dealers and over 8 million customers through a variety of commercial and consumer lending products.

We embrace our obligations under the CRA as an extension of our strong LEAD<sup>4</sup> corporate culture of “Doing it Right” and being a trusted “Ally” to our customers and communities. Ally Bank has devoted significant effort and resources to meeting CRA requirements. Our CRA program is under the direction of the Ally Bank Board of Directors with a bank-wide management CRA committee composed of members of senior management from our business lines, finance, risk, compliance, and corporate citizenship. Our corporate culture is reflected in our drive for “Outstanding” CRA performance, as evidenced by the two most recent CRA examinations of Ally Bank’s CRA performance.

Accordingly, we feel strongly that any CRA modernization should take into account the variety of different business models that exist in banking and financial services today and that will continue to evolve over time as the industry seeks to better serve our customers. The breadth of diverse business models in the industry today—including large corporate institutional banks, banks with significant sweep deposit programs primarily linked to affiliated brokerage accounts, issuers of credit cards and auto loans to consumers and small businesses nationwide, and various

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<sup>4</sup> Our LEAD core values stand for Look externally, Execute with excellence, Act with professionalism, and Deliver Results. Our purpose-driven culture is reflected in our commitment to work with integrity, accountability, and uphold our LEAD core values in the workplace and in the community. These core values shape our culture and drive our success.

combinations of these—illustrates why tailoring is necessary and appropriate for our CRA programs to continue to make impactful loans and investments in a safe and sound manner.

We also support the comment letter (“Coalition Letter”) written by a group of digitally based depository institutions (including Ally Bank) that are not tied to traditional branch networks.<sup>5</sup> We echo the Coalition Letter’s sentiment that while we share many common concerns with branch-based banks, we believe that we have a distinct point of view that should be carefully considered by the Board given the nature of our operations, which rely primarily on digital channels rather than physical branches, to serve our nationwide base of consumer and business customers. In addition to tailoring, we also support the Board’s goals of providing additional transparency, clarity, and consistency to CRA supervisory expectations and evaluations, while balancing the burden of enhanced requirements and strengthening our engagement with the communities we serve.<sup>6</sup>

Guided by the principal to advance proposals that promote a durable rule that tailors to different business models as banking continues to evolve, we provide more detailed perspectives on the following: (1) Evaluation framework for digitally based banks; (2) Certain aspects of the proposed retail test, including consumer loans, purchased loans, and deposit products; (3) Certain aspects of community development, including the qualification of activities that promote economic development by financing small businesses; (4) Preservation and optimization of the strategic plan option; and (5) Optional inclusion of affiliate activities.

## **I. DIGITALLY BASED BANKS AND ASSESSMENT AREAS**

We support the Board’s goals to modernize CRA that take into account banks with different business models—including banks that do not have traditional branch networks<sup>7</sup>—as we and other banks generally move toward a digital delivery model, in line with consumer trends. Tailoring how banks are evaluated is especially important, not only from the perspective of clarifying a bank’s CRA obligations, but also from our fundamental shared goal with the Board to better serve our communities. We appreciate the Board’s exploration of alternative approaches to evaluating banks that have a substantial majority of lending and deposit-taking beyond their assessment areas, including considering the appropriate CRA evaluation framework for “digitally

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<sup>5</sup> The depository institutions that are signatories to the Coalition Letter are Ally Bank; American Express National Bank; Barclays Bank Delaware; Capital One Bank, N.A.; Discover Bank; Goldman Sachs Bank USA; Charles Schwab Bank, SSB; and Synchrony Bank.

<sup>6</sup> See CRA ANPR, 85 Fed. Reg. 66410.

<sup>7</sup> See CRA ANPR, 85 Fed. Reg. 66410, 66418.

based banks.”<sup>8</sup> We set forth below (1) our proposed definition for digitally based banks, (2) our proposed tailored evaluation for digitally based banks, and (3) our concerns with an approach based upon deposits-based assessment areas or lending-based assessment areas.

#### **A. Definition of Digitally Based Banks**

We support the Board’s consideration of an approach to digitally based banks that “could more holistically capture their banking activities.”<sup>9</sup> Regulation BB already tailors evaluation standards to banks of different sizes and types and a natural extension of any modernization effort would be to also tailor to evolving business models.<sup>10</sup> While Ally Bank may exclusively use an online business model to deliver products and services, we believe the concerns we have will become more common (even among branch-based banks) as the industry continues to develop toward digital banking. Accordingly, we support an approach consistent with the Board’s proposal that characterizes “digitally based banks” as banks that gather 80 percent or more of its deposits from geographies outside of its traditional branch networks.<sup>11</sup>

#### **B. Tailored Evaluation for Digitally Based Banks**

We would propose a framework that evaluates a digitally based bank’s CRA activities more holistically to take into account such bank’s “entire community” which may be nationwide. Under this “whole bank” approach, a digitally based bank would (1) be evaluated for retail lending within its branch-based assessment areas and also on a whole bank basis using national comparators and (2) be evaluated for community development activities in the same manner as limited purpose and wholesale banks<sup>12</sup> such that if the bank has adequately addressed the needs of its branch-based assessment areas, it would receive consideration for community development activities anywhere outside of those assessment areas.<sup>13</sup>

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<sup>8</sup> See CRA ANPR, 85 Fed. Reg. 66410, 66418. We note that while the ANPR utilizes the term “internet bank,” we think the term “digitally based banks” is more appropriate to categorize the group of non-traditional banks that predominantly rely on digital delivery channels, instead of branches, to deliver financial products and services.

<sup>9</sup> See CRA ANPR, 85 Fed. Reg. 66411.

<sup>10</sup> See CRA ANPR, 85 Fed. Reg. 66411.

<sup>11</sup> See CRA ANPR, 85 Fed. Reg. 66418 (responding to *Question 9*: “Should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas by using some other threshold?”).

<sup>12</sup> See CRA ANPR, 12 CFR §228.25(e)(2).

<sup>13</sup> See CRA ANPR, 85 Fed. Reg. 66418 (responding to *Question 10*: “How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank’s overall CRA performance?”).

The CRA supports this whole bank evaluation by requiring the appropriate federal financial supervisory agency assess and prepare a report on “...the institution’s record of meeting the credit needs of its *entire community*, including low-and moderate-income neighborhoods.”<sup>14</sup> Although the statute does not define “entire community,” it does provide precedent for evaluating a bank under CRA that is not tied to geography. Under the statute, a bank that has a business model consisting predominantly of “serving the needs of military personnel who are not located within a defined geographic area may define its ‘entire community’ to include its entire deposit customer base without regard to geographic proximity.”<sup>15</sup> A digitally based bank’s business model is similar to the military personnel example in that its activities are not predominantly located within any defined geographic area.

Evaluating digitally based banks under this more holistic “whole bank” approach would provide such banks with flexibility to seek out and make loans and investments that more effectively respond to actual community needs while being economically feasible in alignment with safety and soundness standards. This approach would also permit loans and investments to flow more readily to those areas that have greater need as opposed to CRA “hot spots” where loans and investments are confined to the current narrow definition of CRA assessment areas.

1. Evaluation of Retail Lending: Under a whole bank approach, a digitally based bank’s retail lending activity would be evaluated within its branch-based assessment areas and also on a whole bank basis using national comparators.<sup>16</sup> Generally, we support retaining the Board’s existing focus on branch-based assessment areas (*i.e.*, the geographies including its main office and any of its physical branch locations) as required by current regulation.<sup>17</sup> However, because a digitally based bank’s “entire community” may reflect broad regional geographies or even a national community, digitally based banks should also be evaluated on a holistic, whole bank basis. Under this evaluation, the bank’s retail lending borrower and geographic distributions for each of the bank’s retail product lines across the bank would be compared to national benchmarks—such as the percentage of LMI households nationwide—and the national aggregate of peer performance. Digitally based banks would also have the full use of performance context to the extent markets in which they lend are not reflective of the national benchmarks.

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<sup>14</sup> 12 U.S.C. § 2906 (emphasis added).

<sup>15</sup> See 12 U.S.C. § 2902(4).

<sup>16</sup> See CRA ANPR, 85 Fed. Reg. 66418 (responding to *Question 8*: “Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?”).

<sup>17</sup> See 12 C.F.R. 228.41(c).

2. Evaluation of Community Development Activity: Under the whole bank approach, a digitally based bank's community development evaluation would mirror the current community development test for limited purpose and wholesale banks. If a digitally based bank has adequately met the community development needs of its branch-based assessment areas, it could receive consideration for any additional community development activity outside of those assessment areas.<sup>18</sup> This framework would not change a digitally based bank's overall community development requirement to meet the needs of its branch-based local communities while adding the flexibility to address areas of need outside those assessment areas. As provided for in the ANPR proposal, performance context would also be considered in determining whether a bank has met the needs of its branch-based assessment areas.<sup>19</sup>

### C. Deposits-Based Assessment Areas and Lending-Based Assessment Areas

We would not support an approach that would delineate deposits-based assessment area(s) ("DBAAs") or lending-based assessment areas(s) ("LBAAs") for digitally based banks.<sup>20</sup> Measuring CRA performance based on artificial connections to geographies in which the physical addresses of our depositors or borrowers are located does not align with a digitally based bank's business model to deliver services through digital channels nationwide without regard to any specific geography. As long as our CRA efforts are reasonably designed to satisfy the credit and community development needs that are the focus of the CRA's purpose—providing credit and investment capital in LMI neighborhoods, for LMI individuals and families, and for community development—it should not matter whether those efforts are focused on geographies where our depositors or borrowers are more or less concentrated. Indeed, it is more important that banks have incentives to focus CRA activities on those areas where local community credit needs are greatest. We believe that our "entire community" for CRA purposes should be consistent with our "entire community" for our business model purposes: a national community.

To begin with, the distribution of our products and services is not driven by the physical address of our depositors or loan borrowers. Location is irrelevant to the choice our customers make in choosing our services. Imposing DBAAs or LBAAs on digitally based banks could actually force us (and other digitally based banks) to change our business model. For example, adding

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<sup>18</sup> See 12 C.F.R. § 228.25(e)(2).

<sup>19</sup> See CRA ANPR, 85 Fed. Reg. 66457.

<sup>20</sup> See CRA ANPR, 85 Fed. Reg. 66418 (responding to *Question 8*: "Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?").

DBAAs and LBAs could necessitate a digitally based bank to redirect its resources to certain geographies in a manner that is not consistent with the bank's business plan.

Additionally, from a practical perspective, digitally based banks may be required to make extensive CRA investments and loans in particular geographies where the bank has little or no "on the ground" knowledge of that area's needs and opportunities. In such cases, the most accessible investments may be low-income housing tax credits ("LIHTC") through syndicators and mortgage-backed securities ("MBS"). Because these types of investments are more heavily concentrated in large metropolitan areas where many banks are already investing (such as New York, Los Angeles, and San Francisco), competition for LIHTC and MBS will likely increase beyond available supply, which could increase prices and distort the marketplace for such investments. Furthermore, the smaller—and often most impactful—community development investments and loans become very difficult to manage because there is little substitute for local market knowledge. The combined impact of increasing the required volume of loans and investments in a particular geography and the lack of local knowledge and experience in additional geographies would greatly increase the burden on a bank's resources.

Even more importantly, DBAAs and LBAs would actually undermine the Board's stated intention to mitigate the dual problem of CRA "hot spots" and "deserts."<sup>21</sup> Our experience confirms that the largest amounts of deposits are geographically concentrated in a relatively small number of major metropolitan areas – but not in LMI census tracts—where there is already significant competition for CRA-qualifying loans and investments among numerous banks in those areas. Consequently, the addition of these assessment areas will significantly intensify CRA "hot spots." Additionally, these assessment areas would also exacerbate existing CRA "deserts," such as rural areas and distressed communities. Those areas are not densely populated and aligning proportionate requirements of CRA activity to the level of deposits in that same geography will reduce investments in less populous areas that may need it most.

Finally, DBAA and LBAs fail to address the much broader issue of deposits gathered outside any bank's branches in a holistic manner that will be durable as *all* banks continue to conduct an ever-increasing amount of business digitally.

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<sup>21</sup> See CRA ANPR, 85 Fed. Reg. 66417.

## II. RETAIL TEST

### A. Evaluation of Consumer Loans in the Retail Lending Test

We urge the Board to continue to include consumer loans in the retail lending test only at the bank's option.<sup>22</sup> Mandatory inclusion of consumer loans<sup>23</sup>—especially at potentially the low 15% threshold the Board is considering<sup>24</sup>—would be a sweeping expansion of affirmative CRA obligations far beyond the home mortgages, small business/farm loans, and community development loans<sup>25</sup> currently covered under the retail lending test without data that suggests such an expansion is warranted.

The benefit of mandatory inclusion of consumer loans would not outweigh the burden of the greatly increased data collection and reporting burden. The rationale for proposing optional inclusion of consumer loans is not because they're irrelevant to consumer credit needs, but rather, given the availability of these products online and through highly competitive channels, there is no substantial evidence of unmet credit needs to LMI individuals and borrowers that additional CRA obligations would satisfy. The cost and operational burden of building out the infrastructure necessary (including recordkeeping, testing, and reporting) will be highly burdensome, both on a one-time basis and as an ongoing expense. Collecting HMDA-like data for consumer loans will be expensive and time-consuming, and it should be noted that the public reporting of such data would create an incomplete database based on the increasing number of nonbank lenders entering and competing within the consumer loan market.

Certain types of consumer loans may also present additional challenges. For example, banks that issue credit cards primarily through partnerships with non-banking organizations may not have the ability to obtain sufficient applications from LMI individuals, depending on the clientele of the bank's partners. Requiring that a set portion of LMI individuals acquire such cards in a particular area in order to pass the test would at best require a substantial modification of existing business models, and at worst be impracticable, all with a negligible effect on improving credit availability in that local community.

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<sup>22</sup> See CRA ANPR, 85 Fed. Reg. 66435 (responding to *Question 35*: "What standard should be used to determine the evaluation of consumer loans: (1) A substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?").

<sup>23</sup> See 12 C.F.R. § 225.12(j) for current definition of "consumer loans."

<sup>24</sup> See CRA ANPR, 85 Fed. Reg. 66435 (FRB suggesting "...consumer lending could be evaluated if the dollar amount of consumer loans accounted for 25 percent of a bank's overall activity in an assessment area or, alternatively, 15 percent of a bank's lending in a particular consumer loan category.").

<sup>25</sup> See 12 C.F.R. § 225.12(h) for current definition of "community development loans."

If mandatory evaluation of consumer loans is ultimately required under the retail lending test, it should only be applied to a consumer product line that constitutes a “substantial majority of the institution’s business,” as currently provided for in CRA guidance.<sup>26</sup> The Board should further clarify what would constitute a “substantial majority”<sup>27</sup> in order to provide greater certainty for banks’ long-term business planning across CRA evaluation cycles. Under these circumstances, we would support a threshold in which the dollar amount of a bank’s loans within a consumer lending product line exceeds 75% of the “institution’s total business” as measured by total assets.<sup>28</sup> This approach would be consistent with the Board’s use of the term “substantial majority” in the ANPR, which indicates that the term means 75% or greater.<sup>29</sup> More importantly, this approach would only apply to consumer products lines in which a meaningful evaluation of the bank’s performance would not otherwise be possible.

## **B. Inclusion of Purchased Loans**

We support maintaining the current regulatory consideration of loan originations and purchases in which the retail lending subtest would consider *all* purchased loans, rather than only those loans purchased directly from the originating entity.<sup>30</sup> This approach presents a more holistic picture of how a bank meets the needs of its communities and affords greater flexibility to a diverse range of business models. Some banks are better equipped than others to rely solely on originations to penetrate LMI populations and to control the income distributions of credit applicants. Other banks may partner with third party originating entities and retail partners and lack the same degree of control.

Additionally, a requirement that only loans purchased from originators would qualify could have negative unintended consequences. For example, it could significantly dampen market liquidity. Banks purchasing whole loans sometimes buy loans from intermediaries acting

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<sup>26</sup> See Interagency Questions & Answers Regarding Community Reinvestment (“Interagency Q&A”) at § \_\_.22(a)(1)–2, 81 Fed. Reg. 48506, 48536 (July 25, 2016).

<sup>27</sup> See Interagency Q&A at § \_\_.22(a)(1)–2, 81 Fed. Reg. 48536 (FRB currently interpreting “substantial majority” to be “...so significant a portion of the institution’s lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded” without specifying any particular number of loans or dollar volume).

<sup>28</sup> See CRA ANPR, 85 Fed. Reg. 66435 (responding to *Question 35*: “What standard should be used to determine the evaluation of consumer loans: (1) A substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?”).

<sup>29</sup> See CRA ANPR, 85 Fed. Reg. 66418.

<sup>30</sup> See CRA ANPR, 85 Fed. Reg. 66436 (responding to *Question 38*: “Should the Board provide CRA credit only for non- securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?”).

as aggregators, rather than directly from the originator. This structure provides a robust secondary market that engenders liquidity throughout the broader mortgage market and provides assurances to originators that they can continue to make and sell loans to LMI individuals because aggregators will efficiently find buyers willing to purchase those loans.

### C. Inclusion of Deposits

The retail services subtest's evaluation of deposit products should serve as performance context, but not as a mandatory element or minimum requirement of the evaluation.<sup>31</sup> The CRA instructs the federal banking agencies to "...assess [an] institution's record of meeting the *credit needs* of its entire community, including low- and moderate-income neighborhoods..."<sup>32</sup> without also providing a statutory basis for the evaluation of deposit products. There is currently no readily available data to determine "whether deposit products are used by LMI customers"<sup>33</sup> because many banks do not currently collect or update income information on their depositors. Collecting such information could serve as a significant barrier to LMI individuals applying for deposits accounts. For example, a request for such information could create the unintended impression to potential customers that provision of income information is a prerequisite necessary to, or a decisioning factor evaluated when, opening deposit accounts. The collection of this information could further exacerbate the issue of unbanked or underserved consumers seeking financial services from other providers outside of the banking system. As such, a mandatory evaluation of deposits products under the retail services subtest could undermine the very policy it is designed to support—to provide greater access to financial services to LMI communities.

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<sup>31</sup> See CRA ANPR, 85 Fed. Reg. 66433 (responding to *Question 32*: "How should the Board weight delivery systems relative to deposit products to provide a Retail Services Subtest conclusion for each assessment area? Should a large bank receive a separate conclusion for the delivery systems and deposit products components in determining the conclusion for the Retail Services Subtest?")

<sup>32</sup> 12 U.S.C. § 2903(a)(1) (emphasis added).

<sup>33</sup> See CRA ANPR, 85 Fed. Reg. 66433 (responding to *Question 29*: "What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?" and *Question 30*: "Are large banks able to provide deposit product and usage data at the assessment area level or should this be reviewed only at the institution level?").

### III. COMMUNITY DEVELOPMENT

#### A. Community Development Financing Subtest

We support combining community development loans and qualified investments into a single evaluation of community development financing.<sup>34</sup> Loans and investments accomplish the same purpose of providing borrowers with financing, but are just structured differently. In some circumstances, the same transaction could be structured as either a loan or an investment. Accordingly, it makes sense to combine these structures under a single financing subtest.

#### B. Qualifying Community Development Activities

The Board should preserve all the existing qualifying economic development activities and consider expanding the categories. Current FRB regulations describe activities that “promote economic development” to include “activities that promote economic development by financing business or farms that meet the size eligibility standards of the Small Business Administration’s Development Company (SBDC) or Small Business Investment Company (SBIC) programs or have gross annual revenues of \$1 million or less.”<sup>35</sup>

CRA regulations should retain the current SBDC and SBIC size standards opposed to using only a revised gross annual revenue threshold (as suggested in the ANPR).<sup>36</sup> These SBDC and SBIC standards are well-recognized thresholds for defining small businesses and apply in multiple regulatory settings. The continued use of these standards as presumptions for identifying eligible small businesses would reduce regulatory burden and encourage banks to serve a wide variety of small businesses. Rather than basing the “size” test only on annual gross revenues, the Board should keep the current size test and incent more loans to small businesses by expanding the list of entities in which loans and investments are “presumed to promote economic development”<sup>37</sup> to include small businesses that fall under a certain threshold of annual gross revenues.

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<sup>34</sup> See CRA ANPR, 85 Fed. Reg. 66438 (responding to *Question 42*: “Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?”).

<sup>35</sup> 12 C.F.R. § 228.12(g)(3).

<sup>36</sup> See CRA ANPR, 85 Fed. Reg. 66447 (responding to *Question 59*: “Should the Board consider workforce development that meets the definition of ‘promoting economic development’ without a direct connection to the ‘size’ test?”).

<sup>37</sup> See Interagency Q&A at § \_\_\_\_.12(g)(3)– 1, 85 Fed. Reg. 48526 (providing “The agencies will presume that any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit, eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms, promotes economic development.”)

The Board could also make other expansions to the list of “presumed activities,” such as activities consistent with certain government plans and investments in minority-owned or minority-led small businesses. With respect to government plan activities, the expansion of presumed qualifying activities could include loans provided under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) Payment Protection Program.<sup>38</sup> With respect to minority-owned or -led small businesses, allowing banks to invest more easily in CRA-qualified community development venture capital or private equity funds that are not designated as an SBIC would allow for a more robust, innovative, and diverse ecosystem of access to capital. In our experience, emerging fund managers seeking to raise a first-time fund need institutional investors to anchor their work—both from an investment and technical assistance perspective—in order to attract other private investors. Incenting banks to support minority-owned fund managers will produce a more equitable small business ecosystem since these fund managers will generally invest in and attract companies that are minority- or women-owned. We also support increased incentives for banks to invest in minority- and women-owned depository institutions outside of their assessment areas. We realize that many of these community institutions need large bank partnerships in order to thrive and grow, therefore incentivizing bank leaders to provide technical assistance to these organizations which could potentially strengthen the capacity of these organizations.<sup>39</sup> By awarding CRA credit for an expanded set of activities could help increase credit access for minority individuals and communities.

While we support encouraging broader credit access to minority communities and individuals, we would not recommend embedding a specific requirement into CRA evaluations. The APNR’s suggestion of an “Outstanding” CRA rating being contingent on a bank’s investment in minority-owned depository institutions, women-owned depository institutions, or low-income credit unions (collectively, “MDIs”) could potentially limit other innovative approaches and unintentionally narrow the focus to MDI investments as the only or primary approach to addressing systemic inequities in credit access. Instead, MDI engagement(s) should be one of many factors to elevate a bank’s CRA rating to “Outstanding” and be considered as part of the overall performance.<sup>40</sup>

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<sup>38</sup> See 85 CRA ANPR, Fed. Reg. 66448 (responding to *Question 60*: “Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?”)

<sup>39</sup> See CRA ANPR, 85 Fed. Reg. 66449 (responding to *Question 64*: “Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions?”).

<sup>40</sup> See CRA ANPR, 85 Fed. Reg. 66449 (responding to *Question 64*: “Would designating these investments as a factor an ‘outstanding’ rating provide appropriate incentives?”).

Additionally the Board should retain *all* currently existing components of the “purpose” test (some of which were just added in the 2016 revisions to the Interagency Questions & Answers),<sup>41</sup> especially in light of the current global COVID-19 pandemic and resulting economic crisis that has devastated small businesses across the country. The Board should also retain and even emphasize more strongly the following current provision that:

*“examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, function, or mandate of the activity meets the ‘purpose test.’”<sup>42</sup>*

Finally, to address the Board’s questions regarding clearer standards to demonstrate “job creation, retention, and/or improvement,” we propose providing documentation that in our experience has worked effectively.<sup>43</sup> The documentation could include the name of the small business that received financing, the number or employees (and income breakdown, as appropriate), the location of the small business (*i.e.*, whether it’s located in an LMI geography or an area targeted for redevelopment) and other information pertaining to the “purpose” test. This practice could continue with the Board employing the flexibility regarding whether the information provided “reasonably demonstrates that the “purpose, mandate, or function of the activity meets the ‘purpose test.’”<sup>44</sup> Ally has invested in certain non-SBIC funds over several exam cycles and has received full CRA consideration for those investments.<sup>45</sup>

#### **IV. STRATEGIC PLAN**

We support the Board’s consideration of amending certain aspects of the strategic plan option to provide more flexibility so that it can more aptly tailor to different bank business models.<sup>46</sup> While we agree that there are certain adjustments that could provide more clarity, the current strategic plan framework has effectively permitted banks to invest in and support communities in a manner that accounts for a bank’s specific business model and product offerings for many years. Ally Bank has successfully operated on an approved strategic plan for more than seven years and we have found it to be effective in fulfilling the objectives and spirit

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<sup>41</sup> See Interagency Q&A § \_\_.12(g)(3)– 1, 81 Fed. Reg. 48506.

<sup>42</sup> See Interagency Q&A § \_\_.12(g)(3)– 1, 81 Fed. Reg. 48506.

<sup>43</sup> See CRA ANPR, 85 Fed. Reg. 66447 (responding to *Question 58*: “How could the Board establish clearer standards for economic development activities to “demonstrate LMI job creation, retention, or improvement?”).

<sup>44</sup> See *e.g.* Community Reinvestment Act Performance Evaluation (Federal Reserve Bank of Chicago, February 21, 2017) found at <https://www.chicagofed.org/~media/others/region/community-reinvestment/performance-evaluations/2017/3284070-pdf.pdf>.

<sup>45</sup> See Interagency Q&A § \_\_.12(g)(3)– 1, 81 Fed. Reg. 48506.

<sup>46</sup> See CRA ANPR, 85 Fed. Reg. 66452.

of the CRA while promoting meaningful bank engagement tailored to our business model and the communities we seek to serve. Accordingly, as the Board seeks to modernize its overall CRA framework, it should continue to allow banks to adopt and execute strategic plans with certain changes we note below on (1) the designation of assessment areas, (2) streamlining of certain procedural requirements, and (3) preserving performance context as part of the evaluation.

#### **A. Assessment Areas**

We support the additional flexibility of banks employing a strategic plan to be able to delineate additional assessment areas in geographies that are important to their business, even if those geographies would not otherwise be eligible for delineation as branch-based.<sup>47</sup> However, we note that if the “whole bank” national evaluation framework for digitally based banks proposed above is adopted, such banks would not likely need to designate new assessment areas. The strategic plan framework should also allow banks the option, after adequately addressing the needs of their assessment areas, to receive CRA credit for community development activities outside their assessment areas, just as limited purpose and wholesale banks are able to do currently.<sup>48</sup>

#### **B. Procedural Requirements**

We have some feedback to several of the Board’s procedural proposals that are intended to assist banks with optimizing the strategic plan option including feedback on (1) utilizing a strategic plan template and (2) certain aspects of public input.

To begin with, while provision of a strategic plan template with illustrative instructions could be helpful, the use of such template should not be mandatory. Mandatory use of a template could inadvertently limit a bank’s flexibility to present its strategic plan as it deems appropriate.<sup>49</sup>

Second, we recognize the importance of public input to strategic plans under the existing CRA framework. Community engagement contributes to meaningful identification of community needs and priorities. As such, Ally Bank spends significant time and resources on frequent and consistent contact with community partners, including by routinely assessing community needs

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<sup>47</sup> See CRA ANPR, 85 Fed. Reg. 66454 (responding to *Question 75*: “In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?”).

<sup>48</sup> See Subsection I.B of this comment letter for a parallel discussion regarding assessment areas for internet banks.

<sup>49</sup> See CRA ANPR, 85 Fed. Reg. 66454 (responding to *Question 77*: “Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?”).

informally to confirm we're meeting their needs. In addition to formal engagement opportunities, we believe that informal engagement with our community partners to conduct a needs assessment meaningfully contributes to our ability to meet their needs.<sup>50</sup> While we seek to have regular and engaging dialogue with our community partners, we also think it appropriate that the CRA regulations codify existing guidance stating that institutions operating under strategic plans are *not required to enter into community benefit agreements*.<sup>51</sup> Additionally, when soliciting public comment on a proposed strategic plan, a bank should publish notice of the plan on its website rather than in a newspaper or through the Board's website. Members of a bank's community with a true stake in the community and close knowledge of its particular needs—including, but not limited to, the bank's customers and prospective customers—are more likely to see and react to a notice on the bank's website.<sup>52</sup>

### C. Performance Context

Performance context should continue to remain a critical component of strategic plans. Regulation BB currently provides that the Board “considers whether to approve a proposed strategic plan in the context of” the enumerated factors that comprise “performance context.”<sup>53</sup> The enumerated factors are (1) demographic data; (2) information about lending, investment, and service opportunities in the bank's assessment area; (3) the bank's product offerings and business strategy; (4) the bank's institutional capacity and constraints; (5) the bank's past performance and the performance of similarly situated lenders; (6) the bank's public file; and (7) any other information deemed relevant by the Board.<sup>54</sup> We encourage the Board to promote these considerations as an integral part of the strategic plan evaluation with banks having the obligation to demonstrate that a proposed strategic plan (including assessment areas and measurable goals) is appropriate in light of a bank's particular performance context.

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<sup>50</sup> See CRA ANPR, 85 Fed. Reg. 66454 (responding to *Question 74*: How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed?).

<sup>51</sup> See Interagency Q&A § \_\_\_.29(b)–2, 81 Fed. Reg. 48548 (stating “Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. The Agencies do not monitor compliance with nor enforce these agreements.”)

<sup>52</sup> See CRA ANPR, 85 Fed. Reg. 66453–66454 (responding to *Question 73*: “In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency's website, their own website, or both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?”)

<sup>53</sup> See 12 CFR § 228.21(b).

<sup>54</sup> 12 CFR § 228.21(b)(1)–(7).

**V. AFFILIATE ACTIVITIES**

To the extent unclear, we recommend that the CRA framework maintain the optionality to include the qualifying activities of a bank affiliate, but not impose an additional obligation. This is especially important for banks that perform CRA-qualifying activities through a charitable foundation and also for CRA-qualifying investments that are made by a bank’s holding company because of various restrictions on the bank’s public welfare investment authority (“PWI”). It is important that a bank have the option to include CRA activities of an affiliate, although such inclusion should not be mandatory. Any mandatory inclusion of CRA-qualifying activities would impose significant increased cost and process burdens on institutions with affiliates that engage in lending and investment activities more generally.

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We appreciate the care and thought that went into constructing the ANPR. We share the Board’s view that more tailoring and flexibility is required for digitally based banks with nationwide digital delivery models such as ours. Tailoring will allow banks to more effectively achieve our shared CRA goals to further meet the credit and financial needs of our communities in a safe and sound manner while also recognizing the need to address an ever-evolving banking industry that is advancing more into digital delivery channels as part of any CRA framework modernization effort. Thank you for your consideration of our feedback. If you have any questions, please feel free to contact our CRA officer, Jan Bergeson, at [Jan.Bergeson@Ally.com](mailto:Jan.Bergeson@Ally.com).

Respectfully submitted,



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